

# TENNESSEE REGULATORY AUTHORITY

Sara Kyle, Chairman  
Lynn Greer, Director  
Melvin Malone, Director



REC'D TN  
REGULATORY AUTH.

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460 Jantes Robertson Parkway  
Nashville, Tennessee 37243-0505

OFFICE OF THE  
EXECUTIVE SECRETARY

January 16, 2002

David Waddell, Esq.  
Executive Secretary  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, Tennessee 37243

Hand delivered

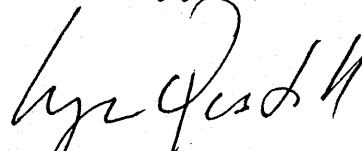
Re: Show Cause Proceeding Against Talk.com, Inc.  
Docket No. 01-00216

Dear David:

Please find enclosed the Response of the Consumer Services Division to Talk.com's Brief in Support of Request to Take Depositions of Complaining Witnesses in the above mentioned proceeding. If you have any questions, please do not hesitate to contact me.

With kindest regards, I am

Sincerely yours,

  
Lynn Questell

Cc/ Henry Walker

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

REGULATORY AUTH.

'02 JAN 16 PM 3 45

OFFICE OF THE  
EXECUTIVE SECRETARY

IN RE:

SHOW CAUSE PROCEEDING  
AGAINST TALK.COM, INC.

DOCKET NO.  
01-00216

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RESPONSE OF THE CONSUMER SERVICES DIVISION TO TALK.COM'S  
BRIEF IN SUPPORT OF REQUEST TO TAKE DEPOSITIONS OF  
COMPLAINING WITNESSES

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The Consumer Services Division ("CSD") of the Tennessee Regulatory Authority ("TRA") hereby responds to Talk.com's Brief in Support of Request to Take Depositions of Complaining Witnesses as follows:

Talk.com argues that "discovery at the TRA is governed by the Tennessee Rules of Civil Procedure."<sup>1</sup> That statement is not entirely accurate. Tenn. Comp. R. & Reg. 1220-1-2-.11 states:

Parties are encouraged where practicable to attempt to achieve any necessary discovery informally, in order to avoid undue expense and delay in the resolution of the matter at hand. **Where such attempts have failed or where the complexity of the case is such that informal discovery is not practicable**, discovery shall be sought and effectuated in accordance with the Tennessee Rules of Civil Procedure.<sup>2</sup>

Here, informal discovery has been, and continues to be, practicable. Though the complaints against Talk.com are numerous, the issues involved are not complex.

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<sup>1</sup> *In Re Show Cause Proceeding Against Talk.com, Inc.*, No. 01-00216 (*Talk.com's Brief in Support of Request to Take Depositions of Complaining Witnesses*, p. 3).

<sup>2</sup> See also Tenn. Code Ann. § 4-5-311.

Accordingly, under the Regulations governing this proceeding, informal discovery is preferable.

Talk.com argues that the CSD “must seek a protective order pursuant to T.R.C.P. 26(c) and must show ‘good cause’ why the depositions should not be allowed.”<sup>3</sup> The CSD disputes this contention. After the issue of depositions was raised, the Pre-Hearing Officer directed the parties to file Briefs. Requiring a Protective Order after such a directive was issued is duplicative and is not required by the Regulations in this procedural posture.<sup>4</sup> Instead, the Regulations clearly express a preference for informal discovery.<sup>5</sup> This preference should not be ignored when informal discovery has not been found impracticable. Moreover, in its Brief, the CSD has demonstrated good cause for rejecting Talk.com’s request to depose the complainants.

Talk.com states that depositions of the complainants are necessary (1) in instances where the authorization given by the subscriber is contested; (2) to explore indications of interference by BellSouth with the business relations of Talk.com and its customers; (3) to examine cramming complaints of billing after cancellation; and (4) to explore unspecified factual defenses. These investigative goals can be accomplished as successfully through informal interviews with the complainants as through formal depositions. Perhaps more so. Complainants who are spared expenditure of time and money required by depositions may be more cooperative.<sup>6</sup>

Talk.com states that it has uncovered evidence that one of the complaints alleging

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<sup>3</sup> *Id.* at 4.

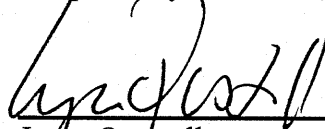
<sup>4</sup> See Tenn.Com. R. & Reg. 1220-1-2-.11(10).

<sup>5</sup> See Tenn.Com. R. & Reg. 1220-1-2-.11(1).

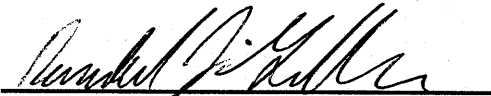
<sup>6</sup> It should be noted that telephonic interviews related to this action would not fall within the definition of “telephone solicitation” including in Tenn. Code Ann. § 65-4-401(6).

a violation of the Do-Not-Call statute, Tenn. Code Ann. § 65-4-401*et seq.*, arose from a business line. After learning of this allegation, the CSD issued a subpoena to BellSouth seeking the listing information, billing name, associated number, service address and billing address of each of the complainants alleging Do-Not-Call violations. This information will be provided to Talk.com after the CSD receives it. If any of this information indicates that a solicitation call was made on a business line, the CSD will immediately seek dismissal of that count. The CSD has no desire to place Talk.com in the position of responding to invalid claims in this proceeding.

Respectfully submitted,



Lynn Questell  
Counsel



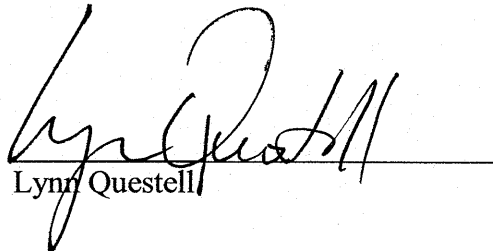
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## CERTIFICATE OF SERVICE

I, Lynn Questell, hereby certify that I have served a copy of the foregoing Response to Talk.com's Brief in Support of Request to Take Depositions of Complaining Witnesses of the Consumer Services Division of the Tennessee Regulatory Authority on the following person by hand delivery or by depositing a copy of the same in the United States Mail, postage prepaid, addressed to them at the addresses shown below, this 16<sup>th</sup> day of January, 2002:

Henry Walker  
Boult, Cummings, Conners & Berry PLC  
414 Union Street, Suite 1600  
Nashville, TN 37219-8062



Lynn Questell